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Supreme Court, U.S.
FILED

No. D 08-454 OCT 3 - 2008

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In The

Supreme Court of the United States

JUANITA M. CRUMP-DONAHUE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

JUANITA M. CRUMP-DONAHUE
1010 South Hughes Street
Little Rock, AR 72204
(501) 664-0865

Petitioner pro se

October 3, 2008

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED FOR REVIEW

"The Federal Tort Claims Act (FTCA) is a comprehensive legislative scheme by which the United States has waived its sovereign immunity to allow civil suits for actions arising out of the negligent acts of Government agents. 28 U.S.C. Section 2671 et seq. The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances. 28 U.S.C. Section 2674. Therefore, a litigant wishing to sue the United States (1346(b)), in Tort, must do so under the FTCA alone. Neither federal statute nor the U.S. Constitution [*Bivens-type cases*] create a "cause of action" under the FTCA." *Dalehite v. United States,* 346 U.S. 15, 30-31 (1953). The FTCA provides its own "Judgment Bar," under 28 U.S.C. Section 2676, which is distinct from the *Common Law Res Judicata Doctrine.* In *Will v. Hallock,* 546 U.S. 345 (2006),...the U.S. Supreme Court stated in a unanimous Opinion..."the [FTCA] judgment bar can only be raised after a case under the [FTCA] Tort Claims Act has been resolved in the Government's favor. January 18 2006."

Whether a prior judgment in a *Bivens-type Case* (founded upon the U.S. Constitution, 14th Amendment, and the Federal Administrative Procedure Act), as a matter of law, bars a Federal Tort Claims Act Case based on the *Common Law Res Judicata Doctrine.*

LIST OF ALL PARTIES

1. The Petitioner is Juanita M. Crump-Donahue, individually, 1010 South Hughes Street, Little Rock, Arkansas 72204

2. The Respondent is the United States represented by: The Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001 on behalf of the United States Department of Agriculture, Federal Officials in the Office of Inspector General.

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PETITION FOR A WRIT OF CERTIORARI

Juanita M. Crump-Donahue, petitioner, respectfully petitions for a writ of certiorari to review the opinion and judgments of the U.S. Court of Appeals for the Eighth Circuit of whether the U.S. Congress intended the Federal Tort Claims Act "Judgment Bar" to be replaced by the *Common Law Res Judicata Doctrine*.

OPINIONS AND JUDGMENTS BELOW

The Judgments and Opinions of the U.S. Court of Appeals for the Eighth Circuit dated: August 15, 2008, June 16, 2008 and October 12, 2006, are reproduced at App. 1a-2a, 7a-8a, 11a-12a.

The Orders and Opinions of the U.S. District Court for the Eastern District of Arkansas, Western Division dated: January 07, 2008, January 07, 2007, December 21, 2007, December 16, 2005, and November 29, 2005, are reproduced at App. 3a-4a, 9a-10a, 5a-6a, 13a-14a, 15a-24a.

JURISDICTION

The judgment of the U.S. Court of Appeals for the Eighth Circuit sought to be reviewed was entered on August 15, 2008. This petition is timely under 28 U.S.C. Sec. 2101(c), and the Supreme Court Rule 13.1, because it is filed within 90 days of the entry of the Judgment sought to be reviewed. This court has jurisdiction to review pursuant to 28 U.S.C. Sec. 1254(1). The jurisdiction of the District Court in the first instance is 28 U.S.C. Sec. 1346(b).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions involved are under the Federal Tort Claims Act, 28 U.S.C. Sec. 2671 et seq., especially 2676 Judgment Bar, and are reproduced at App. 25a-27a.

STATEMENT OF THE CASE

1. This Federal Tort Claims Act (FTCA) Tort Case arises due to the irreparable mental, emotional, and physical damage petitioner was forced to endure as a result of United States Department of Agriculture (USDA), Office of Inspector General (OIG), employees "negligent acts, omissions, and wrongdoings." 28 U.S.C. Sec. 2671 et seq. While fraudulently concealing their wrongdoings, the employees subjected petitioner to years of outrageous and unnecessary stress-inducing reprisal actions in response to her filing a "fraud hotline" complaint. When Ms. Crump-Donahue, in good faith, informed the Government agents that she was disabled due to multiple mental and emotional disabilities, the Government embarked on a systematic plan of destruction against her; despite her fragile health.

2. Although this case presents "Negligent and Intentional Infliction of Emotional Distress Causes of Actions allowable under Arkansas Tort Law for an FTCA case (28 U.S.C. Sec. 1346(b)), twice the Eighth Circuit affirmed the district court's Ruling that petitioner's FTCA case is barred, based on the *Common Law Res Judicata Doctrine;* not the FTCA "Judgment Bar." (28 U.S.C. Sec. 2676) In doing so, the courts *incorrectly* used petitioner's prior judgment in

a *Bivens-type* Case against individual government employees to bar her FTCA Case against the United States (28 U.S.C. Sec. 1346(b)), based on the *Common Law Res Judicata Doctrine,* although the *Bivens* and FTCA cases were founded upon different causes of action.

3. First, on November 29, 2005, the district court dismissed with prejudice petitioner's *Bivens-type* Case that was founded upon the 14th Amendment to the U.S. Constitution and the Administrative Procedure Act Causes of Action. App. 15a-24a.

4. Secondly, on December 16, 2005, the district court *incorrectly preservice* dismissed with prejudice petitioner's FTCA Case No. 1, fourteen days after it was filed and before the Defendant could file an Answer and certify it as against the United States. The district court *preservice* barred FTCA Case No. 1 based on the *Res Judicata Doctrine, incorrectly* citing that the prior judgment in the *Bivens-type case* was based on the same cause of action. However, the FTCA Case was founded on State Tort Law, and the *Bivens-type case* was founded on the U.S. Constitution and the Federal Administrative Procedure Act. App. 13a-14a, 39a-40a, 15a and 24a

5. In this instant, petitioner re-filed her FTCA Case No. 2 founded upon Arkansas Tort Causes of Action. On December 21, 2007, the district court dismissed the case as barred based on the *Res Judicata Doctrine,* due to the prior judgment in the *Bivens-type case*, and the *preservice* barred FTCA Case No. 1, again *incorrectly* stating that both cases were founded upon the same cause of action. App. 3a-6a.

6. June 16, 2008, the Eighth Circuit affirmed the district court's Judgment based on its own October 12, 2006 Opinion, in which it had *incorrectly* ruled that petitioner's FTCA Case No. 1 was barred by the prior judgment in her *Bivens type* case based on the *Res Judicata Doctrine* because they were (incorrect) founded upon the same cause of action. App. 11a-12a. Therefore, the Eighth Circuit *incorrectly* concluded that because the *Bivens* prior Judgment *preservice* barred petitioner's FTCA Case No. 1, then her re-filed FTCA Case No. 2 was also barred by the *Bivens* Judgment based on the *Res Judicata Doctrine.* It affirmed the district court's Order and denied a rehearing. App. 1a-2a.

FACTS OF THE CASE

7. Early January 1999, petitioner filed a fraud complaint against the United States Department of Agriculture (USDA), Farm Service Agency (FSA) of Arkansas with the Little Rock Federal Bureau of Investigations (FBI). After a preliminary investigation, the FBI informed petitioner that there was evidence of fraud in the FSA and advised her to file a "fraud hotline" complaint with the USDA (OIG). Petitioner filed the complaint and spoke with an OIG agent almost daily for approximately two months concerning the "fraud." During the interactions, petitioner perceived OIG as honest in their conversations and came to believe they had established a relationship of trust.

8. Late February 1999, the agent called petitioner, and said that "she had just come out of a meeting with 'high officials,' concerning her 'fraud hotline'

complaint. The officials wanted to use petitioner's name to initiate nation-wide fraud investigations in the USDA FSA's. She had been instructed to inform petitioner that she and the four family members named in the 'fraud hotline' complaint would be financially compensated." That same day the agent noted in her OIG report: "Complainant requested that we do not divulge the identity of the complainant (or the sisters), as having initiated a request for OIG investigation. Public Law 95-452, Sec. 7, prohibits the unwarranted disclosure of the complainant's identity or the taking of reprisal actions against the complainant." App. 28a-29a.

9. On February 23, 1999, Crump-Donahue, petitioner, faxed a letter authorizing OIG to use her name to initiate FSA "fraud" investigations. She informed them that "she was a retired school teacher on disability, due to severe depression, panic disorder, traumatic stress syndrome, agoraphobia (fear of people and open spaces), and severe fatigue." She also discussed the financial problem she and her husband were experiencing because of her major medical and prescription bills. App. 30a-32a. OIG never responded to the letter, nor would the agent take her calls. Ultimately, another agent told petitioner, "they had been instructed not to speak with her again." When Crump-Donahue informed OIG that she and her family members were being threatened and harassed by the local FSA members, OIG would not respond. Petitioner made multiple request to participate in USDA's in-house "dispute-resolution" procedures, and/or be allowed to take her complaint before a USDA Law Judge in order to define the issues of their dispute. She made multiple requests for Freedom of

Information documents concerning the processing of her "fraud hotline"complaint. All requests were either ignored or denied.

10. When Crump-Donahue replied to OIG in authorizing them to use her name to initiate investigations, she had written, "If OIG Civil Rights Office (OCR) will give me enough of a settlement to purchase a home in a security focused neighborhood, along with enough to live on for retirement, I will give OIG permission to use my name in any manner they chose for the good of this case." Therefore, when OIG sent her a copy of a letter addressed to OCR, dated February 12, 2001, which stated, "Please respond directly to Ms. Crump-Donahue....you may discuss with the subject all relevant issues to complete resolve the complaint," petitioner believed OIG would financially compensate her and her family members as they had promised. App. 33a-34a. Subsequently, neither OIG nor OCR would respond to petitioner's requests for clarification and the letter's meaning. OIG cut off communication with her again.

11. For the next three years, petitioner diligently tried to obtain the facts of how OIG processed her "fraud hotline" complaint and why they would not discuss their promise to financially compensate her. Finally, in a June 22, 2004 letter, OIG admitted that in spite of their divulging petitioner and her family members' identities in investigations, she nor the "sisters" warranted financial compensation. OIG based their denial on reasons they had not discussed with her prior to receiving her authorization. They ended the letter saying, "This shall constitute the final

correspondence you will receive from OIG relating to this matter absent active litigation." App. 35a-38a.

12. Petitioner informed OIG that their years of uncooperative fraudulent concealment of the facts of the processing of her "fraud hotline" complaint, the fraudulent concealment of the facts of the exposure of their identities, their refusal to respond to the threats and harassment to her and her family members, their broken promise and broken trust; all had produced stress-inducing reactions that irreparably damaged her mental, and emotional health, which had also manifested as a physical breakdown.

13. In response to petitioner's allegations, and threats of litigation, the Government embarked on a systematic strategy of harassment, intimidation, and destruction against her in her home. Aware of her frail state of mind that had caused her to be almost home bound at the time, the Government used her computer Internet Service as a source of harassment, intimidation, and coercion as a deterrent to prevent her from pursuing "active litigation."

14. In 2004, petitioner developed sores in her mouth and on her body. She experienced constant itching and muscle pains, severe headaches, muscle spasms, multiple sleep disorders, and nightmares that caused her to harm herself. In addition, her already mental and emotional disorders intensified causing her not to be able to concentrate because of great fear, thereby negating her ability to litigate her case. She was hospitalized.

15. June 22, 2007, Mrs. Crump-Donahue requested and was granted permission to re-file her instant FTCA Tort Claims Act Case No. 2 in district court. December 21, 2007, the case was dismissed with prejudice, based on the *Common Law Res Judicata Doctrine*. The district court relied on the Eighth Circuit October 12, 2006 Opinion in FTCA Case No. 1. App. 3a-6a and 11a-12a.

16. Petitioner filed a *Motion for Relief From Judgment* in her prior FTCA Tort Case No. 1 that had been *preservice* dismissed with prejudice based on the *Common Law Res Judicata Doctrine* on December 16, 2005. January 07, 2008, the Motion was denied. Note: Incorrect Caption Juanita M. Crump-Donahue v. Department of Agriculture instead of the United States. App. 9a-10a.

17. Petitioner filed a *Motion for Relief From Judgment* in her re-filed FTCA Tort Claims Act Case No. 2 (on review), that had been dismissed with prejudice based on the *Common Law Res Judicata Doctrine* on December 21, 2007. January 07, 2008, the Motion was denied. App. 3a-4a.

18. In an August 15, 2008 Judgment, the Eighth Circuit affirmed the district court's December 21, 2007 Order that dismissed with prejudice petitioner's FTCA Tort Claims Act Case No. 2 based on the *Common Law Res Judicata Doctrine*. App. 5a-6a, 7a-8a.

19. The Record on Appeal shows that prior to filing FTCA Case No. 1 that was *preservice* barred, and re-filed instant FTCA Case No. 2, wherein both were barred based on the *Res Judicata Doctrine,* petitioner

had not filed an FTCA case that the "court resolved in the Government's favor," that would have "triggered the FTCA "Judgment Bar." 28 U.S.C. Sec. 2676 and *Will v. Hallock.*

REASONS FOR GRANTING THE PETITION

This Court's review is imperative to prevent a miscarriage of justice concerning the U.S. Congress' intent in creating the Federal Tort Claims Act. In this instance, the Appeals Court's Judgments and Opinion, which ruled that an initial FTCA case can be barred based on the *Common Law Res Judicata Doctrine*, due to a previous judgment in a *Bivens-type Case*, conflicts not only with the U.S. Supreme Court's unanimous Opinion in *Will v. Hallock*, but it also conflicts with the U.S. Congress' intent in providing a comprehensive legislative scheme that provides its own "Judgment Bar."

This case presents an important question concerning the intent of the U.S. Congress, when it enacted the Federal Tort Claims Act (FTCA) to provide a vehicle through which U.S. Citizens could seek redress for the wrongdoings committed by government employees. 28 U.S.C. Sec. 2671 et seq. The FTCA intent is so comprehensive that it provides its own "Judgment Bar," as a "barring" mechanism to bar: (1) a subsequently filed FTCA case against the United States that is based upon the same cause of action, or, (2) to bar a subsequently filed *Bivens-type case* against individual government employees; only after a prior FTCA Case has "gone to judgment in the Government's favor." 28 U.S.C. Sec. 2676 and *Will v. Hallock.*

Instead of applying the elements of the FTCA "Judgment Bar," to *preservice* bar petitioner's FTCA Case No. 1 or her re-filed instant FTCA Case No. 2, the district court, affirmed by the Eighth Circuit, barred her FTCA cases based on the *Common Law Res Judicata Doctrine.* In the Eighth Circuit, October 12, 2006 Opinion, it based its decision on State Law instead of FTCA Federal Law, and wrote, "Under the doctrine of res judicata, judgment on merits in prior suit bars second suit involving same parties or their privies based on the same cause of action." App. 1a-2a, 11a-12a.

Since petitioner's *Bivens-type Case* was founded upon the U.S. Constitution (14th Amendment), and the Federal Administrative Procedure Act Causes of Action, while her FTCA *preservice* barred FTCA Case No. 1 and re-filed instant FTCA Case No. 2 are founded upon Arkansas State Tort Law Causes of Action, as authorized under 28 U.S.C. Sec. 1346(b), the two types of cases are not based upon the same cause of action. Therefore, the FTCA "Judgment Bar" was never "triggered" to bar neither FTCA Case No. 1 nor No. 2, because there was no prior FTCA judgment in the "Government's favor" that "triggered" FTCA's "Judgment Bar." 28 U.S.C. Sec. 2676. A prior *Bivens* Judgment does not trigger the FTCA "Judgment Bar." *Will v. Hallock*, App. 49a-53a. *Dalehite v. United States*, 346 U.S. 15, 30-31 (1953).

CONCLUSION

For the foregoing reasons, the Judgments and Opinion of the Court of appeals should be reversed, allowing petitioner's FTCA Instant Case No. 2 to be remanded with instructions to proceed on the merits.

Respectfully submitted,

Juanita M. Crump-Donahue, *pro se*
1010 South Hughes Street
Little Rock, AR 72204
(501) 664-0865

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 08-1087

[Filed June 16, 2008]

Juanita M. Crump-Donahue, (originally sued on behalf of her mother, Eldora Spencer and aunts Ophelia Richardson, Georgia Lee Holloway Estate and Juline Worthy, Plaintiff - Appellant	)
v.	)
United States, Defendant - Appellee	)

Appeal from U.S. District Court
for the Eastern District of Arkansas - Little Rock
(4:07-cv-00511-WRW)

JUDGMENT

All pending motions are denied.

This court has reviewed the original file of the United States District Court. It is ordered by the court

that the judgment of the district court is affirmed. See Eighth Circuit Rule 47A(a).

June 16, 2008

Order Entered at the Direction of the Court;
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

No. 4:07CV00511-WRW

[Filed January 7, 2008]

JUANITA CRUMP-DONAHUE
PLAINTIFF

vs.

UNITED STATES OF AMERICA
DEFENDANT

ORDER

On December 21, 2007, this case was found to be barred by *res judicata* and dismissed with prejudiced. Accordingly, Plaintiff's Motions for Relief From Judgment (Doc. No. 54, 55) are DENIED.

The Clerk of the Court is directed to no longer accept filings in this case.

IT IS SO ORDERED this 7th day of January, 2008.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

No. 4:07CV00511-WRW

[Filed December 21, 2007]

JUANITA CRUMP-DONAHUE	)
PLAINTIFF	)
	)
v.	)
	)
UNITED STATES OF AMERICA	)
DEFENDANT	)
	)

ORDER

Pending is Plaintiff's Motion for Summary Judgment (Doc. No. 28). Defendant has responded (Doc. No. 35). Plaintiff's Motion is DENIED.

Plaintiff's Complaint[1] and Amended Complaint[2] allege that the USDA tampered with, and continues to

[1] Doc. No. 1.

[2] Doc. No. 21.

tamper with, Plaintiff's computer. Defendant's actions allegedly caused "an irreparable detrimental decline in Plaintiff and her family members' mental, emotional, and physical health and enjoyment."[3] The claims in Plaintiff's Complaint and Amended Complaint arose from the same set of facts involved in two prior actions, and the parties are also the same.[4] Both previous actions were dismissed with prejudice.[5]

Res judicata bars relitigation of every matter raised, and any other matter that should have been raised, in a previous cause of action where a final judgment was rendered.[6] A final judgment was entered in both previous actions that bars the relitigation of any related claims against the same parties. Thus, this case is barred by the doctrine of *res judicata*. Accordingly, the Plaintiff's Motion (Doc. No. 28) is DENIED and Plaintiffs Complaint and Amended Complaint are DISMISSED with prejudice.

IT IS SO ORDERED this 21st day of December, 2007.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

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[3] *Id.*

[4] Case Nos. 4:05-CV-00708-WRW and 4:05-CV-01844-WRW.

[5] Case Nos. 4:05-CV-00708-WRW, Doc. No. 30 and 4:05-CV-01844-WRW, Doc. No. 7.

[6] *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371 (1940).

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 08-1087

[Filed August 15, 2008]

Juanita M. Crump-Donahue, (originally sued on behalf of her mother, Eldora Spencer and aunts Ophelia Richardson, Georgia Lee Holloway Estate and Juline Worthy, Appellant	)
v.	)
United States, Appellee	)

Appeal from U.S. District Court
for the Eastern District of Arkansas - Little Rock
(4:07-cv-00511-WRW)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 15, 2008

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

No. 4:05CV01844-WRW

[Filed January 7, 2008]

JUANITA CRUMP-DONAHUE	)
PLAINTIFF	)
	)
vs.	)
	)
DEPARTMENT OF AGRICULTURE	)
DEFENDANT	)
	)

ORDER

On December 16, 2005, this case was found to be barred by *res judicata* and dismissed with prejudiced. The Eighth Circuit Court of Appeals affirmed the dismissal. Accordingly, Plaintiff's Motion for Relief From Judgment (Doc. No. 21) is DENIED.

The Clerk of the Court is directed to no longer accept filings in this case.

IT IS SO ORDERED this 7th day of January, 2008.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX F

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 06-1320

[Filed October 12, 2006]

Juanita M. Crump-Donahue, Appellant,

v.

United States of America, Appellee.

Appeal from the United States District Court for the Eastern District of Arkansas.

[UNPUBLISHED]

Submitted: October 6, 2006
Filed: October 12, 2006

Before MURPHY, BYE, and MELLOY, Circuit Judges.

PER CURIAM.

Juanita Crump-Donahue appeals the district court's[1] preservice dismissal of her suit under the Federal Tort Claims Act. After de novo review, see Moore v. Sims, 200 F.3d 1170, 1171 (8th Cir. 2000) (per curiam) (standard of review), we agree with the district court that Crump-Donahue's suit is barred by res judicata, see Daley v. Marriott Int'l, Inc., 415 F.3d 889, 895-96 (8th Cir. 2005) (under doctrine of res judicata, judgment on merits in prior suit bars second suit involving same parties or their privies based on same cause of action). We also deny her appellate motions.

Accordingly, we affirm. *See* 8th Cir. R. 47B.

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[1] The Honorable William R. Wilson, Jr., United States District Judge for the Eastern District of Arkansas.

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

No. 4:05CV01844-WRW

[Filed December 16, 2005]

JUANITA CRUMP	)
PLAINTIFF	)
	)
vs	)
	)
UNITED STATES OF AMERICA	)
DEFENDANT	)
	)

ORDER

Plaintiff filed two Motions for leave to proceed *in forma pauperis*, a Complaint, An Amended Complaint, and two Motions to Amend her Complaint[1]. The Complaint and Amended Complaint make allegations against the USDA for denying rights to Plaintiff in connection with property located in Lonoke County and owned by the Woodard Sisters. The parties are the same, and the claims of this action arose from the

[1] Doc. Nos. 1-5.

same set of facts involved in a prior action filed by Plaintiff and Dismissed with prejudice on November 29, 2005.[2]

Res Judicata bars relitigation of every matter raised and any other matter that should have been raised in a previous cause of action where a final judgment was rendered.[3] "*Res Judicata* ensures the finality of decisions."[4] A final judgment was entered in the previous action which bars relitigation of any related claims against the same parties.

This case is, therefore, barred by the doctrine of *Res Judicata*. The Plaintiff's Motions are DENIED and Plaintiff's Complaint and Amended Complaint are DISMISSED with prejudice.

IT IS SO ORDERED this 16th day of December, 2005.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

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[2] Case No. 4:05CV00708-WRW, Doc. No. 30

[3] *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371 (1940).

[4] *Brown v. Felsen*, 442 U.S. 127 (1979).

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

No. 4:05CV00708 WRW

[Filed November 29, 2005]

JUANITA M. CRUMP-DONAHUE PLAINTIFF	)
VS.	)
UNITED STATES DEPARTMENT OF AGRICULTURE, et al. DEFENDANTS	)

ORDER

Plaintiff filed a Motion to add new parties. The Motion was granted and Plaintiff was ordered to file the proposed Amended Complaint within fourteen (14) days.[1] Plaintiff complied, and filed a Third Amended Complaint, containing additional specific factual allegations and adding sixty-five (65) defendants.

[1] Doc. No. 25.

Plaintiff, who is *pro se*, was granted permission to proceed *in forma pauperis*.[2] A provision in the federal *in forma pauperis* statute authorizes district courts to dismiss a pauper's case, *sua sponte*,[3] if the court becomes convinced at any time that the case is frivolous.[4] The *sua sponte* dismissal of frivolous complaints is designed to discourage the waste of judicial resources by parties who are not otherwise constrained by financial considerations.

Background

Plaintiff commenced this *pro se* claim in the United States Court of Federal Claims.[5] Plaintiff filed a Complaint, an Amended Complaint, and a Supplemental Complaint, suing the United States Department of Agriculture ("USDA").

Plaintiff alleged that she sought information in 1997 and 1998 from the local Farm Service Agency ("FSA") concerning forty acres of land in Lonoke County over which she had power of attorney, to act on behalf of family members, collectively known as the "Woodard sisters." According to Plaintiff, the FSA refused to provide her with information about the

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[2] Doc. No. 5.

[3] 28 U.S.C. § 1915(d) (1994), amended by 28 U.S.C. § 1915(e) (Supp. 1997).

[4] *Cooper v. Wood*, 111 F.3d 135 (8th Cir. 1997).

[5] Doc. No. 1.

sisters' land, and any government entitlements connected to it.

Because Plaintiff could not get satisfaction from the local FSA, she went to the USDA and filed a complaint with its Office of Civil Rights ("OCR"). The complaint alleged that the Lonoke County FSA, Director George Harrison and County Committee Member, L. B. Bryant conspired to deprive the Woodard sisters of their property rights. The OCR eventually dismissed the complaint.

Plaintiff alleged that the USDA's civil rights department failed to comply with its own procedures,[6] in violation of the Administrative Procedures Act. She also claims that the OCR violated the due process and equal protection clauses of the Constitution. Plaintiff demanded monetary relief for the above violations.

After consideration, the Federal Claims Court dismissed the case for lack of jurisdiction. However, the Claims Court found that "[f]ederal district courts may have jurisdiction to hear plaintiff's constitutional and civil rights claims, and her allegations of administrative due process violations."[7] The claim was transferred. After transfer, Plaintiff was ordered to file

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[6] Plaintiff stated that the OCR failed to send an "Acknowledgment of Complaint," did not inform Plaintiff that additional information was required, and otherwise completely failed to adhere to the directives of DR 4300-6 (a USDA regulation).

[7] Doc. No. 1, p. 5.

a more definite statement to clarify her theories of liability.[8]

Plaintiff filed an Amended Complaint,[9] alleging that members of the local Farm Agency were guilty of criminal fraud, forgery, and conspiracy to deprive the Woodard sisters of their property rights. Plaintiff asserted that a local FSA committee member, Mr. Bryant, interfered with the sisters' rights when he registered the farm as being operated by him. Plaintiff provided a list of criminal laws violated by Mr. Bryant in collusion with the FSA.

Plaintiff's Third Amended Complaint provides a more detailed description of the facts that underlie the fraud, forgery, and conspiracy allegations. A review of this Complaint reveals that Mr. L. B. Bryant is a family member who allegedly took control of property belonging to his cousins, the Woodard sisters, by forging their names to cash leases. Plaintiff contends that Mr. Bryant was aided and abetted by the local FSA and the USDA. Plaintiff names sixty-five (65) USDA and FSA officials that allegedly played a part in a conspiracy to deprive Plaintiff of her federal rights and the Woodard sisters of their property rights.

Standard of Review

A finding that a complaint is frivolous, is not the same as finding that it fails to state a claim under Fed.

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[8] Doc. No. 8.

[9] Doc. No. 12.

R. Civ. P. 12 (b)(6). The Supreme Court held that an unsuccessful claim is not necessarily a frivolous claim: "When a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not."[10] A complaint is frivolous if it lacks an arguable basis in law or fact.[11]

A court may dismiss a claim as factually frivolous only if the facts alleged are "clearly baseless,"[12] "fanciful,"[13] or "fantastic."[14]

> An *in forma pauperis* complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be 'strange, but true; for truth is always strange, stranger than fiction'[15]

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[10] *Neitzke v. Williams*, 490 U.S. 319, 329 (1989).

[11] *Id.* at 325.

[12] *Id.* at 327.

[13] *Id.* at 325.

[14] *Id.* at 328.

[15] *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (quoting Lord Byron, *Don Juan*, canto XIV, stanza 101 (T. Steffan, E. Steffan &

Courts must construe *pro se* complaints liberally, and, unless the initial complaint undoubtedly lacks legal and factual basis, courts are expected to grant leave to allow a plaintiff to allege sufficiently specific and particular facts.[16]

Equal Protection and Due Process

The Equal Protection Clause prohibits government officials from selectively applying the law in a discriminatory way.[17] It protects suspect classifications.[18] "[Y]ou must be singled out because of your membership in the class, and not just be the random victim of governmental incompetence."[19] In fine, Plaintiff must allege an unlawful intent to treat her differently because she is a member of a suspect class.

The Due Process Clause of the Fourteenth Amendment guarantees that no state shall deprive any person of life, liberty, or property, without due

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W. Pratt eds. 1977)).

[16] *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985).

[17] *Central Airlines, Inc. v. United States*, 138 F.3d 333, 334-35 (8th Cir. 1998) (citation omitted)).

[18] *Batra v Board of Regents of the University of Nebraska*, 79 F.3d 717, 721(8th Cir. 1996).

[19] *Id.* at 721 (quoting *Albright v. Oliver*, 975 F.2d 343, 348 (7th Cir. 1992)).

process of law.[20] There is nothing in the language of the due process clause that requires the state to protect life, liberty, and property of its citizens against invasion by private actors.[21]

Administrative Procedure Act

Plaintiff alleges that the USDA, by refusing to properly investigate her complaints, violated the Administrative Procedure Act ("APA"). The APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review."[22] The APA allows for judicial review of final agency action when there is no other adequate remedy in a court.[23] The APA defines agency action to include the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.[24] The Supreme Court stated that as a general matter, two conditions must be satisfied for agency action to be final: (1) the action must mark the end of the agency's decision making process -- it must not be a temporary or interlocutory decision; and (2) the action must be

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[20] U.S. Const. amend. XIV, § 2.

[21] *DeShaney by DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 197 (1989);

[22] 5 U.S.C. § 702; *Lincoln v. Vigil*, 508 U.S. 182 (1993).

[23] 5 U.S.C. § 704.

[24] 5 U.S.C. § 551(13).

one where rights or obligations have been determined, or from which legal consequences will flow.[25]

Discussion

Because Plaintiff is *pro se,* she has been given every opportunity to amend and supplement her pleadings. Plaintiff's final Amended Complaint provided all of the particulars behind this action. Her pleading is 109 pages, and there are 113 exhibits attached. After a thorough review of the pleadings and exhibits, it is clear that this is a family dispute over property rights.

There are no facts alleged that support an action based on constitutional or other federal grounds. Plaintiff's allegation that she was denied equal protection because the FSA and the USDA gave preferential treatment to a family member is without merit. There are no allegations that these state agencies made decisions based on race. Therefore, Plaintiff's equal protection allegations lack an arguable basis in law.

Plaintiff's allegations that state and federal agents conspired with her relative, Mr. Bryant, to deprive the Woodard sisters of their property rights are "fantastic." While fact is sometimes stranger than fiction, it is a stretch of the imagination to accept as true that numerous officials conspired to defraud elderly women of forty acres of land in Lonoke County. While, Mr. Bryant, may have forged the names of his cousins on the leases, the due process clause does not

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[25] *Bennett v. Spear*, 520 U.S. 154, 177 (1997).

compel the USDA or the FSA to protect Plaintiff from the fraudulent actions of a family member. Plaintiff has sufficient remedies for her grievances without invoking the Constitution.

Plaintiff's allegations that the USDA's civil rights division owed a duty to investigate her allegations is also without merit. The APA does not apply here because the decision by the USDA to close the investigation of Plaintiff's charges was not an "agency action" as that term is defined by the Supreme Court. The actions of the USDA do not represent a final determination of the rights and obligations of the parties involved in the property dispute; nor do any "legal consequences" flow from the agency's decision. Therefore, the Administrative Procedures Act does not apply.

After reviewing the Plaintiff's pleadings, it cannot be discerned, even under the liberal review that applies to *pro se* litigants, what harm Plaintiff suffered, what acts of defendants caused that harm, and what federal rights were infringed. Therefore, I find that the complaint is frivolous because it leaves no doubt that Plaintiff cannot allege facts sufficient to state a claim. Plaintiff's Complaint is DISMISSED WITH PREJUDICE. All other pending Motions are DENIED AS MOOT.

IT IS SO ORDERED this 29th day of November, 2005.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

NO.4:05CV00708 WRW

[Filed November 29, 2005]

JUANITA M. CRUMP-DONAHUE PLAINTIFF	)
VS.	)
UNITED STATES DEPARTMENT OF AGRICULTURE, et al. DEFENDANTS	)

JUDGMENT

Based on an Order entered this date, this case is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED this 29th day of November, 2005.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX I

STATUTORY PROVISIONS INVOLVED
Relevant provisions of the Federal Tort Claims Act (FTCA) include:

1. 28 U.S.C. 2671 et seq. Federal Tort Claims Act authorizes Tort Suits, based on State Tort Law, against the United States for the negligent acts, omissions, or wrongdoing of government employees while acting within the scope of their employment.

2. 28 U.S.C. 1346(b). "The United States may be held liable 'under circumstances where the United States, if a private person would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA grants jurisdiction for actions on monetary claims for injury, property loss or death 'caused by the negligent or wrongful act or omission of any employee of the Government.'

3. 28 U.S.C. 2675(a). "The requirement that a claimant must present an administrative claim and receive a denial or wait six months to pass before filing suit only applies to suits against the United States."

4. 28 U.S.C. 2676. Judgement as Bar. "The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter,

against the employee of the government whose act or omission gave rise to the claim."

5. 28 U.S.C. 2679 a, (b)(1), (2)(A)(B): "(b)(1) - The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government –

(A) which is brought for a violation of the Constitution of the United States or,

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized."

6. 28 U.S.C. Sec. 2675. "Presentations of an administrative claim to the appropriate agency is a jurisdictional prerequisite to suit."

7. 28 C.F.R., Part 14. "The claim must include a sum certain amount of damages sought and must include sufficient information to allow the agency to investigate the claims."

8. 28 U.S.C. Sec. 2675(a). "Failure to act on an administration claim within six months of presentment can, at the option of the claimant, be treated as a denial of the administrative claim."

9. 28 U.S.C. Sec. 2679(d)(4). "Upon certification, an action or proceeding subject to paragraphs (1) (2) or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions."

10. *Common Law Res Judicata Doctrine.* "Under the doctrine of res judicata, judgment based on merits in prior suit bars second suit involving the same parties, based upon the same subject matter." Quoted from the Eighth Circuit Opinion in *Juanita M. Crump-Donahue v. United States of America,* No. 06-1320 (District Court FTCA Tort Case No. 4:05-Cv-01844). App. 2 and 3.

APPENDIX J

PS-0399-0113

Complainant believes the property is tied into Birch Tree Communities, Inc., 416 Rest Street (501-842-3777) and 700 Haywood East (501-842-3663), England, Arkansas. Complainant says "neither of these addresses or Birch Tree Communities, Inc. is listed in the Lonoke County Tax and Assessors Office. Birch Tree also operates a realty company. Complainant says that all of this is tied to George Harrison.

Complainant also alleges discriminatory practices against "poor, black, and aging heirs," and is also faxing documents to the Office of Civil Rights. Further, complainant reports that the family has received threats from L. B. Bryant, and that the matter has also been reported to the FBI.

Note: Complainant provided the attached documents and gave permission to forward the Exhibits to the appropriate agency, as necessary. Complainant, however, also requests that we not divulge the identity of complainant (or the sisters), as having initiated a request for an OIG investigation.

Public Law 95-452, sec. 7, prohibits the unwarranted disclosure of the complainant's identity or the taking of reprisal action against the complainant.

Faxed ___ Mailed ___ Init. ___

1. Region referred to:
   ___ USSS
   ___ Other _____
   (outside of USDA)

2. ___ PID, please refer to USDA Agency for action.

3. ___ Region opened investigation and COM is attached.

Region File Number _____

_____ _____
Special Agent-in-Charge Date

Attachments

OIG-I/PID/STWeinstein:stw:720-0325:February 23, 1999
Doc.03990113

APPENDIX K

DOCUMENT #1

FBI-Squad 2
(501) 228-8509

February 23, 1999

From: Juanita (Crump) Donahue
Fax: #501-661-1898
Phone: #501-664-0865

RE: Lonoke County Farmland Takeover (Woodard Sisters Farm #3402, Tract #2532, Lonoke County Arkansas) Ect.(Gateway-Non-Profit Business Enterprises)

To: OIG Hotline – Attention: Operator 03
Fax # 202-690-2474

After returning your telephone call today, and after thinking about your request to use my name in pursuing the investigation of this case, I make the following determination. Due to the circumstances I am listing, I will offer a proposal.

CIRCUMSTANCES:

In April 1989, I retired from teaching due to severe depression, panic disorder, traumatic stress syndrome, agoraphobia, and severe fatigue. It had been just one

year since I finished completing work for a Masters of Education Degree. Since that time, I have been living on monthly insurance disability payments and my husband's salary. We live from paycheck to paycheck.

My husband is an automobile salesman. The reason I hesitated about OIG using my name is I don't know how this information could affect his business. I am unable to work on a public job. I have major medical and prescription bills that my husband's company insurance pay for. If something happens to his job, I don't know what would happen to us. He is almost sixty.

/s/ Juanita M. Crump-Donahue

PROPOSAL:

If OIG Civil Rights Office will give me enough of a settlement to purchase a home in a security focused neighborhood, along with enough to live on for retirement,

I will give OIG permission to use my name in any manner they chose for the good of the case. I have worked very hard on this investigation. I have been able to do so secretly because of my medical condition. Basically, I am a loner, and I am home-bound most of the time. I feel that because of my investigative work, OIG, the FBI, and USDA *Civil Rights* have been saved a lot of time and expense trying to make the connections or make sense of this case. Due to people's fear, the information I have submitted could never have surfaced. I am sure we are saving the government financially, as well as in manpower.

CONCLUSION:

If you are interested and think this is a fair offer, please call, fax, or write me. I am interested in whatever decision you make. This proposed offer I make is to be separate from the compensation that is just for the Woodard Sister's. Although I would like their settlement to be "tax free" too. They are senior citizens who have suffered greatly because of these crimes.

- we are
not
involved
in this
aspect
her cp

I appreciate your concern and your asking my permission to use my name in advance.

Sincerely,

P.S. Please see attached document I retrieved from our attorney's file concerning the possibility of areas of businesses operated by my uncle and possibly George Harrison, L. B. Bryant, and First United Bank, FKA Citizens Bank & Trust, Carlisle, Arkansas involvement. I am sure these businesses are receiving grants & * * *

APPENDIX L

UNITED STATES DEPARTMENT
OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250

DATE: February 12, 2001

REPLY TO
ATTN OF: PS-0399-0113

FROM: Brian L. Haaser
Special Agent-in-Charge
Program Investigations Division

TO: Peter Parham
Confidential Assistant
Office of Civil Rights

SUBJECT: Hotline Complaint—George Harrison, County Executive Director (CO-12), Lonoke County, Lonoke, Arkansas, and L.B. Bryant and Mary Bryant, Lonoke County, Arkansas -- FRAUD

We are forwarding this information for whatever action you believe to be appropriate. No reply to our office is necessary.

NARRATIVE: The USDA Hotline Office received the attached letter and documentation from Juanita M. Crump-Donahue, concerning her Civil Rights complaint. Please respond directly to Ms. Crump-Donahue.

Public Law 95-452, sec. 7, prohibits the unwarranted disclosure of the complainant's identity or the taking of reprisal action against the complainant. In those instances where the complainant is anonymous or wishes to remain confidential, no attempts should be made to discover the identity of the complainant. The complaint should be provided or discussed only with those who need to resolve the issues. The typed complaint should not be provided to the subject; however, you may discuss with the subject all relevant issues to completely resolve the complaint.

Attachments

cc: Juanita M. Crump-Donahue

OIG-I/PID/SSSchimmelbusch:sss:February 12, 2001
Doc. 03990113

APPENDIX M

June 22, 2004

Juanita M. Crump-Donahue
1010 South Hughes Street
Little Rock, AR 77204

Subject: Request for Reward Concerning Office of Inspector General Hotline Complaint No. PS-0399-0113

Dear Ms. Crump-Donahue:

I am writing in response to your letters dated April 20, 2004, April 22, 2004, April 25, 2004, April 30, 2004, May 5, 2004, and May 6, 2004, in which you request settlement of claims, including a request for a reward, relating to U.S. Department of Agriculture (USDA), Office of Inspector General (OIG) hotline complaint No. PS-0399-0113.[1] Copies of your letters are enclosed for your reference. (Enclosures 1 to 6).

OIG may pay a cash reward/award to an individual for providing substantial information not previously known by OIG, which leads to (1) a felony conviction or (2) a substantial monetary recovery from individuals

[1] Your letters also request settlement of alleged claims filed with the USDA Office of Civil Rights. As OIG cannot make decisions regarding the settlement of those claims, OIG will not address these issues.

who defrauded USDA programs. OIG records indicate that in February 1999, you provided information to the OIG Hotline office relating to allegations of fraud in USDA programs. OIG referred your allegations and supporting documentation to the USDA Farm Service Agency (FSA) for review. FSA determined that the allegations were not substantiated, and so that matter was closed. See Letter from Roger Viadero, to Juanita Crump-Donahue (Sept. 13, 1999) (Enclosure 7).

In August 2000, you provided additional information to OIG, relating to allegations of forgery of a lease agreement on property owned by your mother and three aunts. Based upon this new information, OIG reopened its files, and investigated these new allegations. After the investigation was completed, OIG closed its case files based upon the decision by both Federal and State criminal prosecutors not to prosecute the matter. OIG found that had forgery occurred, your mother and aunts would have been eligible to receive one-fourth of 25 percent of the annual USDA program payment ($2,486.85 for 1998) or approximately $155.00 for program year 1998. See Letter from James J. Crowley, Special Agent-in-Charge, Southwest Region, OIG, to Crump-Donahue (May 25, 2001) (Enclosure 8).

OIG has determined that you did not provide substantial, new information that led to either a felony conviction or a substantial monetary recover from individuals who defrauded USDA programs. Therefore, an award is not appropriate in this instance.

In your letters, you have alleged that OIG acted contrary to law and procedures when it closed Hotline

Complaint No. PS-0399-0113. As discussed above, OIG investigated your allegations or otherwise referred the allegations to the appropriate USDA agency for review. The allegations were not supported, and OIG closed its investigative files as a result. OIG acted appropriately under the circumstances.

Additionally, in your May 6, 2004 letter, you request that OIG agree to participate in an agency "dispute resolution" process, pursuant to subchapter IV of the Administrative Procedures Act, 5 U.S.C. §§ 571-584. As discussed above, you did not provide substantial information that led to a felony conviction or a substantial monetary recovery from individuals who defrauded USDA programs. Therefore, a reward is not warranted. As such, OIG will not agree to participate in a dispute resolution process regarding this issue.

This shall constitute the final correspondence that you will receive from OIG relating to this matter, absent active litigation.

Sincerely.

SIGNED

SHENANDOAH M. BUNN
Assistant Counsel to the Inspector General

Enclosure

bcc (w/ enclosure):
Acting Director, Office of Civil Rights, USDA
Byron Waters, Esq., Office of General Counsel, USDA
Deidre MacNeil, Assistant Counsel, OIG

Karen Ellis, Special Agent-in-Charge, Program Investigations Division

APPENDIX N

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

Case No. 4-05-CV-1844 WRW

[Filed December 13, 2005]

JUANITA M. CRUMP-DONAHUE: PLAINTIFF	)
vs.	)
THE UNITED STATES OF AMERICA: DEFENDANT	)

Federal Tort Claims Act Case

(28 U.S.C. 2671 - 2680) 28 U.S.C., Sec. 1346(b)(1); Civil Rights Violations of: Discrimination/Intimidation/ hatred/& Retaliation Activities used to promote Negligence, and Reckless Infliction of Emotional Distress causing mental, physical and economic damages over a six year period and continuing in violation of Arkansas Civil Rights Statutes, 16-123-105 - 16-123-108.

SECOND MOTION TO AMEND ORIGINAL COMPLAINT AND *PRO SE* APPLICATION

Pursuant to Federal District Court Local Rule 5.5(e), Plaintiff, Complainant, and *Pro Se* Juanita M. Crump-Donahue presents a Second Motion to Amend her Original Complaint AND *Pro se* Application, and to disregard any other amended complaints or Application to proceed *Pro se*, or other documents already submitted to file an "Original Complaint," for this case.

Plaintiff has only petitioned for *Pro se* status in the Federal District Court concerning these claims and had received *Pro se* status for this Federal Tort Claims Act case #4:05-CV-00006. The Court granted Plaintiff "voluntary dismissal" of that case to allow Plaintiff time to submit "Personal Injuries and Property Damages Claims" to the United States Department of Agriculture. Plaintiff has paid all fees and costs associated with claims in the U.S. Court of Federal Claims and USDA Board of Contract Appeals and investigations of rights. Plaintiff appreciates the Court's tolerance.

Respectfully submitted,

/s/
Juanita M. Crump-Donahue, Complainant, Plaintiff and *Pro se*
1010 South Hughes Street
Little Rock, Arkansas 72204
Phone #501-664-0865

APPENDIX O

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

No. 4:07CV00511 WRW

[Filed June 22, 2007]

Juanita M. Crump-Donahue
1010 South Hughes Street
Little Rock, Arkansas 72204
Plaintiff

v.

The United States of America
Defendant

Amended Complaint
Federal Tort Claims Act,
28 U.S.C. sec. 2671-80

MOTION REQUESTING PERMISSION TO FILE THIS PROPOSED AMENDED FEDERAL TORT CLAIMS ACT, PERSONAL INJURY AND PROPERTY DAMAGE COMPLAINT FOR MONETARY RELIEF

Comes, Plaintiff and Pro se, Juanita M. Crump-Donahue, with a Motion Requesting Permission to File this Proposed Amended Federal Tort Claims Act (FTCA) "Personal Injury," and "Property Damaged" Complaint for monetary relief against the United States

SUMMARY

1. Defendant, the United States, on behalf of former and present Secretaries: Daniel L. Glickman and Ann M. Veneman, and Mike Johanus; former and present

* * *

computer, printer, and Internet Services, the Defendant's name and pattern of activities lifted from the computer's system and application show that it is more likely than not that Defendant hijacked her computer, printer and Internet Services. Also Defendant did not respond to Plaintiff's Amended Administrative "Personal Injury" and "Property Damage" claims because they were sure Plaintiff would not be able to prove their wrongdoings. However, the computer claims are only part of the allegations. Defendant used Plaintiff's name and information in investigations when they were not supposed to.

Because of the foregoing facts and the attached documentation, the following Arkansas Tort Laws provide causes of action allowed under the Federal Tort Claims Act and Arkansas Tort Law.

FIRST CAUSE OF ACTION
Intentional Infliction of Emotional Distress

26. The Plaintiff restate as fully set forth here and every claim, assertion, and allegation set forth in the foregoing Paragraphs I through 25 of this Complaint.

27. The Defendant's actions described herein violate Arkansas "Intentional Infliction of Emotional Distress" or "Tort of Outrage" law. "Elements of the tort of outrage: (I) The Defendant intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of his conduct; (2) the conduct was extreme and outrageous and utterly intolerable in a civilized community; (3) the defendant's conduct was the cause of the plaintiff's distress; and (4) the emotional distress sustained by the plaintiff was so severe that no reasonable person could be expected to endure it." "The conduct at issue is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized society." *Ross v. Patterson*, 817 S.W.2d 418, 420 (Ark. 1991).

28. In their conduct set forth in this Complaint, the Defendant, United States, acted under color of federal law to cause an irreparable detrimental decline in Plaintiff and her family members' mental, emotional, and physical health and enjoyment.

29. The Defendant's actions, orders, approvals, and omissions violated the Federal Tort Claims Act, sec. 2671-2680 and give rise to a "personal injury" and "property damage" causes of action for compensatory

monetary damages as stated in the administrative claim dated may 10, 2005 because it intentionally, maliciously, and with forethought caused Plaintiff and her family members to be injured.

SECOND CAUSE OF ACTION
Negligent Infliction of Emotional Distress

31. The Plaintiff restate as fully set forth here and every claim, assertion, and allegation set forth in the foregoing Paragraphs 1 through 25 of this Complaint.

32. The Defendant's actions described herein violate Arkansas "Negligent Infliction of Emotional Distress" Tort Law which legal standards of behavior are based on what a "reasonable" person would do in a particular situation.

33. In their conduct set forth in this Complaint, the Defendant, United States, acted under color of federal law and caused irreparable, detrimental mental, emotional, and physical decline in Plaintiff and her family members' health and enjoyment.

34. The Defendant's actions, orders, approvals, and omissions violated the Federal Tort Claims Act, sec. 2671-2680 and give rise to a "personal injury" and "property damage" causes of action for compensatory monetary damages as stated in the administrative claim dated may 10, 2005, because it did not adhere to the standards of a reasonable person's duty to protect Plaintiff and her family members from irreparable harm.

THIRD CAUSE OF ACTION
Invasion of Privacy by Intrusion

35 The Plaintiff restate as fully set forth here and every claim, assertion, and allegation set forth in the foregoing Paragraphs 1 through 25 of this Complaint.

36. The Defendant's actions described herein violate Arkansas Tort Law of "Invasion of Privacy by Intrusion" consistent with Reinstatement (Second) of torts section 625B (1981) which provides that: 'One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person."

37. In their conduct set forth in this Complaint, the Defendant, United States, acted under color of federal law and caused irreparable, detrimental mental, emotional, and physical decline in Plaintiff and her family members' health and enjoyment through ongoing terrorist activities perpetuated in her home lasting over nine years and continues to this date, June 22, 2007.

38. The Defendant's actions, orders, approvals, and omissions violated the Federal Tort Claims Act, sec. 2671-2680 and give rise to a "personal injury" and "property damage" cause of action for compensatory monetary damages as stated in the administrative claims dated may 10, 2005, because they used Plaintiff's home, property, and health situation to severely injury her.

FOURTH CAUSE OF ACTION
Invasion of Privacy

39. The Plaintiff restate as fully set forth here and every claim, assertion, and allegation set forth in the foregoing Paragraphs 1 through 25 of this Complaint.

40. The Defendant's actions described herein violate Arkansas Tort Law of "Invasion of Privacy" which consists of four actionable forms of invasion of privacy: (1) appropriation, which consists of the use of the plaintiff's name or likeness for the defendant's benefit; (2) intrusion, which is the invasion by one defendant upon the plaintiff's solitude or seclusion; (3) public disclosure of private facts, which is publicity of a highly objectionable kind, given to private information about the plaintiff, even though it is true and no action would lie for defamation; and (4) false light in the public eye, consisting of publicity that places the plaintiff in a false light before the public."

41. In their conduct set forth in this Complaint, the Defendant, United States, acted under color of federal law and caused irreparable detrimental mental, emotional, and physical decline in Plaintiff and her family members' health and enjoyment.

42. The Defendant's actions, orders, approvals, and omissions violated the Federal Tort Claims Act, sec. 2671-2680 and give rise to a "personal injury" and "property damage" cause of action for compensatory monetary damages as stated in the administrative claim dated May 10, 2005, because Defendant used Plaintiff's and her family members' names and

information in a beneficial scheme designed to put them in danger and did injure them.

RELIEF REQUESTED

Wherefore, Plaintiff respectfully prays that this Court will consider the Defendant's capabilities compared to the hardship their actions caused Plaintiff, lasting from 1999 until this present time (June 22, 2007) and will:

(a) Grant Plaintiff the 106 Million Dollars compensatory damages she requested in the Administrative "Personal Injury" and "Property Damage" amended Claim she presented to USDA, Office of General Counsel, Karen Carrington, on May 10, 2005 of which an amount is allowable under the Federal Tort Claims Act and Arkansas Tort Law. 28 U.S.C. sec. 2675; 28 C.F.R. sections 14.2 and 14.4.

(b) Grant Plaintiff any other relief this Court may deem just and proper.

Dated: May 22, 2007

Respectfully submitted,

/s/

Juanita M. Crump-Donahue, Pro Se
1010 South Hughes Street
Little Rock, Arkansas 72204
Phone: 501-664-0865
Fax: 501-661-1898

Notary Public: /s/
6/22/07

[seal]

APPENDIX P

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http://www.scotusopinions.com/
2006/01/18/will-v-hallock/

7/16/2008

**SUPREME COURT
OPINIONS**

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Will v. Hallock

Decided January 18, 2006

The United States Supreme Court today released an opinion in *Will v. Hallock*. SOUTER, J., delivered the opinion for a unanimous Court. A transcript of the oral argument in this case is available here. The syllabus follows.

> In a warranted search of Susan and Richard Hallocks' residence, Customs Service agents seized computer equipment, software, and disk drives. No criminal charges were ever brought, but the equipment was returned damaged, with all of the stored data lost, forcing Susan to close her computer software business. She sued the United States under the Federal Tort Claims Act, invoking the waiver of sovereign immunity, 28 U. S. C. §1346, and alleging negligence by

the customs agents in executing the search. While that suit was pending, Susan also filed this action against the individual agents under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, alleging that the damage they caused to her computers deprived her of property in violation of the Fifth Amendment's Due Process Clause. After the District Court dismissed the first suit on the ground that the agents' activities fell within an exception to the Tort Claims Act's waiver of sovereign immunity, §2680(e), the agents moved for judgment in the *Bivens* action. They relied on the Tort Claims Act's judgment bar, §2676, which provides that "the judgment in an action under 1346(b) . . . constitute[s] a complete bar to any action . . . against the employee of the government whose act or omission gave rise to the claim." The District Court denied the motion, holding that dismissal of the Tort Claims Act suit against the Government failed to raise the Act's judgment bar. The Second Circuit affirmed, after first ruling in favor of jurisdiction under the collateral order doctrine. Under this doctrine, appellate authority to review "all final decisions of the district courts," §1291, includes jurisdiction over "a narrow class of decisions that do not terminate the litigation," but are sufficiently important and collateral to the merits that they should "nonetheless be treated as 'final,'" *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 867.

Held: A refusal to apply the Federal Tort Claims Act's judgment bar is not open to collateral appeal. Pp. 4–9.

(a) Three conditions are required for collateral appeal: the order must "[1] conclusively determine the disputed question; [2] resolve an important issue completely separate from the merits . . . , and [3] be effectively unreviewable on appeal from a final judgment." *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.*, 506 U. S. 139, 144. Those conditions are "stringent." *Digital Equipment*, *supra*, at 868. Unless they are kept so, the underlying doctrine will overpower the substantial finality interests §1291 is meant to further. Pp. 3–4.

(b) Among the "small class" of orders this Court has held to be collaterally appealable are those rejecting absolute immunity, *Nixon* v. *Fitzgerald*, 457 U. S. 731, 742, qualified immunity, *Mitchell* v. *Forsyth*, 472 U. S. 511, 530, and a State's Eleventh Amendment immunity claim, *Puerto Rico Aqueduct*, *supra*, at 144–145. In each of these cases, the collaterally appealing party was vindicating or claiming a right to avoid trial, in satisfaction of the third condition: unless the order to stand trial was immediately appealable the right would be effectively lost. However, to accept the generalization that any order denying a claim of right to prevail without trial satisfies the third condition would leave §1291's final order requirement in tatters. See *Digital Equipment*, *supra*, at 872–873. Pp. 4–5.

(c) Thus, only some orders denying an asserted right to avoid the burdens of trial qualify as orders that cannot be reviewed "effectively" after a conventional final judgment. The further characteristic that merits collateral appealability is "a judgment about the value of the interests that would be lost through rigorous application of the final judgment requirement." *Digital Equipment*, *supra*, at 878–879. In each case finding appealability, some particular value of a high order was marshaled in support of the interest in avoiding trial, *e.g.*, honoring the separation of powers, *Nixon*, *supra*, at 749, 758, preserving the efficiency of government and the initiative of its officials, *Mitchell*, *supra*, at 526, and respecting a State's dignitary interests, *Puerto Rico Aqueduct*, *supra*, at 146. It is not mere avoidance of a trial, but avoidance of a trial that would imperil a substantial public interest that counts. *Coopers & Lybrand v. Livesay*, 437 U. S. 463, 468. Pp. 5–7.

(d) The customs agents' claim here does not serve a weighty public objective. This case must be distinguished from qualified immunity cases. The nub of such immunity is the need to induce government officials to show reasonable initiative when the relevant law is not "clearly established," *Harlow v. Fitzgerald*, 457 U. S. 800, 817; a quick resolution of a qualified immunity claim is essential. There is, however, no such public interest at stake simply because the judgment bar is said to be applicable. It is the avoidance of litigation for its own sake that

supports the bar, and if simply abbreviating litigation troublesome to government employees were important enough, §1291 would fade out whenever the government or an official lost in an early round. Another difference between qualified immunity and the judgment bar lies in the bar's essential procedural element. While a qualified immunity claim is timely from the moment an official is served with a complaint, the judgment bar can be raised only after a case under the Tort Claims Act has been resolved in the Government's favor. The closer analogy to the judgment bar is the defense of res judicata. Both are grounded in the perceived need to avoid duplicative litigation, not in a policy of freeing a defendant from any liability. But this rule of respecting a prior judgment by giving a defense against relitigation has not been thought to protect values so important that only immediate appeal can effectively vindicate them. See *Digital Equipment, supra*, at 873. Pp. 7–9.

387 F. 3d 147, vacated and remanded.

APPENDIX Q

U.S. District Court
Eastern District of Arkansas (Little Rock)
CIVIL DOCKET FOR CASE #: 4:05-cv-01844-WRW

[December 28, 2007]

Crump-Donahue v. Department of Agriculture
Assigned to: Judge William R. Wilson, Jr
Case in other court: USCA8, 06-01320
USCA8, 06-01320
USCA8, 06-01320
Cause: 28:2671 Federal Tort Claims Act

Date Filed: 12/02/2005
Date Terminated: 12/16/2005
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

Plaintiff

Juanita M Crump-Donahue
represented by
Juanita M Crump-Donahue
1010 South Hughes Street
Little Rock, AR 72204
(501) 664-0865
PRO SE

V.

Defendant

Department of Agriculture
Office of the Secretary; Office of the Inspector General; Office of Civil Rights, et al
TERMINATED: 12/06/2005

Defendant

USA

Date Filed	#	Docket Text
12/02/2005	1	MOTION for Leave to Proceed in forma pauperis filed by Juanita M Crump-Donahue. (kjp,) (Entered: 12/02/2005)
12/02/2005	2	COMPLAINT filed by Juanita M Crump-Donahue against Department of Agriculture (kjp,) (Entered: 12/02/2005)
12/02/2005		***Set Magistrate Flag (kjp,) (Entered: 12/02/2005)
12/06/2005	3	AMENDED COMPLAINT against United States of America; terminating Dept of Agriculture as deft filed by Juanita M Crump-Donahue.(bsm) (Entered: 12/06/2005)
12/06/2005		*** Party Department of Agriculture terminated per

Date Filed	#	Docket Text
		Amended Complt (bsm) (Entered: 12/06/2005)
12/07/2005	4	MOTION to Amend Original Complt by Juanita M Crump-Donahue. (bsm) (Entered: 12/07/2005)
12/13/2005	5	MOTION for Leave to Proceed in forma pauperis by Juanita M Crump-Donahue. (bsm) (Entered: 12/13/2005)
12/13/2005	6	SECOND MOTION to Amend Original Complt and Pro Se Application by Juanita M Crump-Donahue. (bsm) (Entered: 12/13/2005)
12/16/2005	7	ORDER DISMISSING CASE; denying pltf's MOTIONS 1 5 for leave to proceed in forma pauperis and MOTIONS 4 6 to amend the complt; case is barred by the doctrine of Res Judicata; pltf's complt and amended complt are dismissed with prejudice. Signed by Judge William R. Wilson Jr. on 12/16/05. (bsm) (Entered: 12/16/2005)
12/16/2005	8	CERTIFICATE OF MAILING by the Clerk re 7 Order Dismissing Case (bsm) (Entered: 12/16/2005)

Date Filed	#	Docket Text
12/20/2005	9	NOTICE OF APPEAL as to 7 Order Dismissing Case and request to proceed on appeal in forma pauperis by Juanita M Crump-Donahue. (thd) (Entered: 12/21/2005)
12/20/2005		MOTION for Leave to Appeal in forma pauperis by Juanita M Crump-Donahue. (dac) (Entered: 12/27/2005)
01/13/2006	10	ORDER granting [] Motion for Leave to Appeal in forma pauperis. Signed by Judge William R. Wilson Jr. on 1/13/06. (dac) (Entered: 01/17/2006)
01/17/2006	11	Amended and Corrected NOTICE OF APPEAL as to 7 Order Dismissing Case, by Juanita M Crump-Donahue. (dac,) (Entered: 01/17/2006)
01/17/2006	12	NOTIFICATION OF APPEAL and NOA SUPPLEMENT as to 11 Amended Notice of Appeal, 10 Order on Motion for Leave to Appeal in forma pauperis, 7 Order Dismissing Case, 9 Notice of Appeal.(All documents will be sent in paper with certified docket entries and one volume original file TO EIGHTH CIRCUIT COURT OF

Date Filed	#	Docket Text
		APPEALS CLERK'S OFFICE). (dac) (Entered: 01/17/2006)
01/17/2006	13	CERTIFICATE OF MAILING by the Clerk re 12 Notification of Appeal and NOA Supplement, 10 Order on Motion for Leave to Appeal in forma pauperis (dac,) (Entered: 01/17/2006)
01/25/2006	14	USCA Docketing Letter as to 11 Amended Notice of Appeal filed by Juanita M Crump-Donahue, 9 Notice of Appeal filed by Juanita M Crump-Donahue. USCA Case Number 06-1320 (dac,) (Entered: 01/25/2006)
10/12/2006	16	OPINION of USCA as to 11 Amended Notice of Appeal filed by Juanita M Crump-Donahue, 9 Notice of Appeal filed by Juanita M Crump-Donahue (dac,) (Entered: 01/26/2007)
10/12/2006	17	USCA JUDGMENT as to 9 Notice of Appeal filed by Juanita M Crump-Donahue. Judgment of the district court is affirmed in accordance with the opinion of this Court (dac,) (Entered: 01/26/2007)
10/27/2006	15	Appeal Record Returned: one volume original file 11 Amended

Date Filed	#	Docket Text
		Notice of Appeal, 9 Notice of Appeal (dac,) (Entered: 10/27/2006)
01/25/2007	18	MANDATE of USCA in accordance with the opinion and judgment of 10/12/06 as to 11 Amended Notice of Appeal filed by Juanita M Crump-Donahue, 9 Notice of Appeal filed by Juanita M Crump-Donahue, (dac,) (Entered: 01/26/2007)
03/01/2007	19	Letter from Clerk USCA8, petition for a writ of certiorari has been filed with the U. S. Supreme Court, No. 06-1151 (dac) (Entered: 03/02/2007)
04/24/2007	20	Letter from Clerk USCA8, petition for a writ of certiorari is denied by the Supreme Court (dac) (Entered: 04/24/2007)

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(2)

Supreme Court, U.S.
FILED
DEC 3 - 2008
OFFICE OF THE CLERK

No. 08-454

In The
Supreme Court of the United States

JUANITA M. CRUMP-DONAHUE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR REHEARING

JUANITA M. CRUMP-DONAHUE
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Petitioner pro se

December 3, 2008

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PETITION FOR REHEARING

Petitioner's Case: Petitioner has been barred from proceeding with a Federal Tort Claims Act Case against the United States in the district court, based on the *Res Judicata Doctrine* due to a prior dismissed with prejudice judgment of a *Bivens-type Case*, because they both concerned the wrongdoing by federal law enforcement agencies.

> Question: As a matter of law, under the Federal Tort Claims Act (FTCA), does a *Bivens* Judgment trigger the FTCA Judgment Bar, under 28 U.S.C. Section 2676, to bar a subsequently filed FTCA Tort Case.

Petitioner requests this petition for rehearing because she believes her case is "certworthy," due to the fact that: (1) it clearly raises an important federal questions of statutory law of general interest concerning the Federal Tort Claims Act, Judgment Bar and how it is to be used; (2) it shows how the Eighth circuit's decision (in this case) conflicts with a recent Seventh Circuit Appeals Court's ruling that the FTCA Judgment Bar cannot be replaced with the *Res Judicata Doctrine;* and (3) it shows how the Eighth Circuit's decision also conflicts with governing U. S. Supreme Court precedent in *Will v. Hallock* regarding how the Federal Tort Claims Act Judgment Bar is to be used. Basically, this petition seeks a consistent answer of law concerning how and when the FTCA Judgment Bar can be triggered to bar a subsequently filed FTCA Tort Case.

Petitioner believes if the Court sees no conflict in the recent Seventh Circuit's Ruling in *Steven Manning*

v. United States of America and Robert Buchan and Gary Miller, (Northern District of Illinois, Cook County, October 07, 2008), and its own ruling in *Will v. Hallock,* 546 U.S. 345 (2006), it will consider her case "certworthy." Both Rulings consistently . . . interpret the Federal Tort Claims Act, Judgment Bar Statute as only triggered "after a FTCA Case has gone to judgment in the Government's favor," rather than that it can be triggered by a *Bivens* Judgment. This correct interpretation is necessary to grant this petition, and allow petitioner to proceed with her Federal Tort Claims Act Case on the Merits.

In *Manning's,* the appeals court focused on the FTCA judgment bar. On October 07, 2008, the United States Court of Appeals for the Seventh Circuit held:

> "If a federal law enforcement officer commits a tort, the victim has two distinct avenues of relief: he may pursue a constitutional tort claim against the individual office under *Bivens v Six Unknown Named Agents of Federal Bureau of narcotics,* 403 U.S. 388, 91 S.Ct. 199, 29 L.Ed.3d 619 (1971), or he may pursue a common law tort claim against the United States pursuant to the Federal Tort claims Act ("FTCA"), 28 U.S.C. Sections 1346, 2671-80. The latter avenue is subject to an important caveat. Under 28 U.S.C. Section 2676, a judgment in an FTCA action acts as a complete bar to any action by the claimant." The Seventh Circuit also said. ".....Congress did not import common law res judicata into Section 2676. The [FTCA] judgment bar stands on its own."

Considering the consistency in *Will v. Hallock*, and *Manning's* interpretation of the Statutory provision of the Federal Tort Claims Act Judgment Bar, petitioner prays this Court will allow her to proceed on the merits of her Federal Tort Claims Act Case since a prior FTCA judgment bar has not been raised to bar her instant FTCA case under 2676.

This petition should be granted.

Respectfully submitted,

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CERTIFICATION

The foregoing is restricted to the grounds specified in 44.2 Sup. Ct. R. and it is presented in good faith and not for delay.

Juanita M. Crump-Donahue /s/

Juanita M. Crump-Donahue, *pro* se